

1 Bradley Benbrook  
2 brad@benbrooklawgroup.com  
3 State Bar No. 177786  
4 Benbrook Law Group, PC  
5 400 Capitol Mall  
6 Suite 2530  
7 Sacramento, CA 95814  
8 (916) 447-4900 (phone)  
9 (916) 447-4904 (fax)

10 Jonathan F. Mitchell \*  
11 jonathan@mitchell.law  
12 Mitchell Law PLLC  
13 106 East Sixth Street  
14 Suite 900  
15 Austin, Texas 78701  
16 (512) 686-3940

17 \* *pro hac vice* application pending

18 *Counsel for Plaintiffs and Proposed Class*

19  
20 UNITED STATES DISTRICT COURT  
21 CENTRAL DISTRICT OF CALIFORNIA  
22 SOUTHERN DIVISION  
23

24 **Georgia Babb; John J. Frangiamore**  
25 **Jr.; William Happ; Michelle**  
26 **Pecanic-Lee; David Schmus; and**  
**Abram van der Fluit, as individuals,**  
and on behalf of all others similarly  
situated,

Plaintiffs,

Case No. \_\_\_\_\_

**Plaintiffs' Class-Action Complaint**

1 v.

2 **California Teachers Association;**  
3 **United Teachers of Los Angeles,** as  
4 representative of the class of all  
5 chapters and affiliates of the  
6 California Teachers Association;  
7 **National Education Association;**  
8 **Edmund G. Brown,** in his official  
9 capacity of Governor of the State of  
10 California; **Xavier Becerra,** in his  
11 official capacity as Attorney General  
12 of the State of California; **Mark**  
13 **Gregersen, Eric Banks, Priscilla**  
14 **Winslow, Erich Shiners,** and  
15 **Arthur A. Krantz,** in their official  
16 capacities as chairman and members  
17 of the California Public Employment  
18 Relations Board; **R. Alexander**  
19 **Acosta,** in his official capacity as  
20 U.S. Secretary of Labor; **John F.**  
21 **Ring, Mark Gaston Pearce, Lauren**  
22 **McFerran, William Emanuel,** and  
23 **Marvin Kaplan,** in their official  
24 capacities as chairman and members  
25 of the National Labor Relations  
26 Board,

Defendants.

Georgia Babb, John J. Frangiamore Jr., William Happ, Michelle Pecanic-Lee, David Schmus, and Abram van der Fluit are current or former public-school teachers who bring this class action on behalf of themselves and all others similarly situated, seeking redress for the defendants' past and ongoing violations of their constitutionally protected rights. The defendants have violated the representative plaintiffs' constitutional rights by forcing them to pay compulsory "fair share service fees" to the California Teachers Association and its chapters and affiliates as a condition of their employment, even though the representative plaintiffs do not belong to this union and do not wish to subsidize the union's activities. The representative plaintiffs seek a refund of all unlawfully collected "fair share service fees," an injunction that forbids the defendants to collect union fees from nonmembers without their consent, and costs and attorneys' fees under 42 U.S.C. § 1988.

### JURISDICTION AND VENUE

1. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367.

2. Venue is proper because a substantial part of the events giving rise to the claims occurred in this judicial district. *See* 28 U.S.C. § 1391(b)(2).

### PARTIES

3. Plaintiff Georgia Babb resides in Sandoval County, New Mexico.

4. Plaintiff John J. Frangiamore Jr. resides in Orange County, California.

5. Plaintiff William Happ resides in Butte County, California.

6. Plaintiff Michelle Pecanic-Lee resides in Los Angeles County, California.

7. Plaintiff David Schmus resides in Orange County, California.

1 8. Plaintiff Abram van der Fluit resides in Los Angeles County,  
2 California.

3 9. Defendant California Teachers Association (CTA) is a labor union  
4 whose offices are located at 1705 Murchison Drive, Burlingame, California  
5 94010. It has more than 1,300 chapters and affiliates throughout the State.

6 10. Defendant United Teachers of Los Angeles is a local union chapter  
7 affiliated with the California Teachers Association. Its offices are located at  
8 303 Wilshire Boulevard, 10th Floor, Los Angeles, California 90010. It is sued  
9 as representative of the class of all chapters and affiliates of the CTA.

10 11. Defendant National Education Association (NEA) is a labor union  
11 whose headquarters are located at 1201 16th Street NW, Washington, D.C.  
12 The NEA is affiliated with the CTA.

13 12. Defendant Edmund G. Brown is Governor of the State of California.  
14 His office is in Sacramento, California. Governor Brown is the representative  
15 of the State and is sued in his official capacity.

16 13. Defendant Xavier Becerra is the Attorney General of California. His  
17 office is in Sacramento, California. Attorney General Becerra is the chief law  
18 officer of the State and is charged with enforcing the State's laws—including  
19 Cal. Gov't Code §§ 3546 and 3546.3, which the plaintiffs are challenging as  
20 unconstitutional. Attorney General Becerra is sued in his official capacity.

21 14. Defendant Mark Gregersen is chair of the California Public  
22 Employment Relations Board, the entity that oversees public-sector  
23 collective bargaining in California and administers the State's labor and  
24 collective-bargaining laws, including Cal. Gov't Code §§ 3546 and 3546.3,  
25 which the defendants are challenging as unconstitutional. Defendant  
26 Gregersen is sued in his official capacity.

1       15. Defendants Eric Banks, Priscilla Winslow, Erich Shiners, and Arthur  
2 A. Krantz are members of the California Public Employment Relations  
3 Board. They are all sued in their official capacities.

4       16. Defendant R. Alexander Acosta is the U.S. Secretary of Labor. He is  
5 charged with enforcing federal labor laws, including the National Labor  
6 Relations Act, and he is sued in his official capacity.

7       17. Defendant John F. Ring is chairman of the National Labor Relations  
8 Board, and defendants Mark Gaston Pearce, Lauren McFerran, William  
9 Emanuel, and Marvin Kaplan are members of the National Labor Relations  
10 Board. They are charged with enforcing federal labor laws, including the  
11 National Labor Relations Act, and they are sued in their official capacity.

12                               **STATEMENT OF THE CLAIM**

13       18. Ms. Babb is a public-school teacher who was employed by the Nuvview  
14 School District in California from 2000 through 2006. She is currently  
15 employed by the Rio Rancho Public Schools in New Mexico. While she was  
16 teaching at Nuvview, Ms. Babb refused to join the CTA or its affiliates  
17 because she disapproved of their political advocacy and collective-bargaining  
18 activities and did not wish to support them in any way. Nevertheless, Ms.  
19 Babb was forced to pay “fair share service fees” to the CTA as a condition of  
20 her continued employment. *See* Cal. Gov’t Code § 3546(a).

21       19. Mr. Frangimore is a public-school teacher who currently works in a  
22 non-union school district, but previously worked for the Compton Unified  
23 School District (1990–96) and the Bellflower Unified School District (1996–  
24 2016), both of which were agency shops. Mr. Frangimore refused to join the  
25 CTA or its affiliates during that time because he disapproved of their  
26 political advocacy and collective-bargaining activities and did not wish to

1 support them in any way. Nevertheless, Mr. Frangimore was forced to pay  
2 “fair share service fees” to the CTA as a condition of his continued  
3 employment. *See* Cal. Gov’t Code § 3546(a).

4 20. Mr. Happ is a retired public-school teacher who taught in the  
5 California public schools for 27 years. Mr. Happ refused to join the CTA or  
6 its affiliates because he disapproved of their political advocacy and collective-  
7 bargaining activities and did not wish to support them in any way.  
8 Nevertheless, Mr. Happ was forced to pay “fair share service fees” to the  
9 CTA as a condition of his continued employment. *See* Cal. Gov’t Code  
10 § 3546(a).

11 21. Ms. Pecanic-Lee is a public-school teacher for the Hacienda La  
12 Puente Unified School District. Ms. Pecanic-Lee refuses to join the CTA or  
13 its affiliates because she disapproves of their political advocacy and  
14 collective-bargaining activities and does not wish to support them in any  
15 way. Nevertheless, Ms. Pecanic-Lee has been forced to pay “fair share  
16 service fees” to the CTA as a condition of her continued employment. *See*  
17 Cal. Gov’t Code § 3546(a).

18 22. Mr. Schmus is a former public-school teacher who taught in the  
19 Hacienda La Puente Unified School District from 2000 through 2015. Mr.  
20 Schmus refused to join the CTA or its affiliates because he disapproved of  
21 their political advocacy and collective-bargaining activities and did not wish  
22 to support them in any way. Nevertheless, Mr. Schmus was forced to pay  
23 “fair share service fees” to the CTA as a condition of his continued  
24 employment. *See* Cal. Gov’t Code § 3546(a).

25 23. Mr. van der Fluit is a public-school teacher in the Los Angeles School  
26 District. Mr. van der Fluit refuses to join the CTA or its affiliates because he

1 disapproves of their political advocacy and collective-bargaining activities  
2 and does not wish to support them in any way. Nevertheless, Mr. van der  
3 Fluit has been forced to pay “fair share service fees” to the CTA as a  
4 condition of his continued employment. *See* Cal. Gov’t Code § 3546(a).

5 24. The compelled subsidies that the representative plaintiffs and their  
6 fellow class members must pay to the California Teachers Association and its  
7 affiliates as a condition of their employment violates their constitutional  
8 rights.

9 25. Although California law allows nonmembers to seek partial refunds of  
10 their compelled “fair share service fees” and allows them to insist that their  
11 contributions will be used only to support activities “germane” to collective  
12 bargaining, this does not alleviate the defendants’ constitutional violations.  
13 *See* Cal. Gov’t Code § 3546(a). A public-employee union’s collective-  
14 bargaining activities are no less political than its lobbying and electioneering  
15 activities, as all of these actions are directed at the government and seek to  
16 influence government policy. *See Harris v. Quinn*, 134 S. Ct. 2618, 2632–33  
17 (2014). In addition, money is fungible, so when the representative plaintiffs  
18 and their fellow class members are forced to subsidize CTA’s collective-  
19 bargaining activities, they are freeing up resources for CTA to spend on  
20 political and ideological activities that they oppose. Finally, the  
21 representative plaintiffs do not wish to subsidize *any* of CTA’s activities, and  
22 their compelled support of CTA’s collective-bargaining activities is no less  
23 an affront to the plaintiffs as their compelled support of the CTA’s political  
24 and ideological advocacy.

25 26. The law of California authorizes the CTA and its affiliates to extract  
26 money from non-union members as a condition of their employment. *See*,

1 *e.g.*, Cal. Gov't Code § 3546 (authorizing CTA to collect "fair share service  
2 fees" from nonmembers as a condition of employment) (attached to the  
3 complaint as Exhibit 1); Cal. Gov't Code § 3546.3 (authorizing CTA to  
4 compel "religious objectors" to remit money to a union-approved charity in  
5 lieu of a "fair share service fee") (attached to the complaint as Exhibit 2).  
6 Each of these statutes is unconstitutional, along with any other statute that  
7 authorizes or establishes agency shops in public employment, or that allows a  
8 public-employee union to garnish the wages of public employees without  
9 first securing the employee's affirmative, written consent.

10 27. The California Teachers Association and its affiliates are acting under  
11 color of state law by imposing and collecting these "fair share service fees,"  
12 in accordance with the laws of the State that authorize these agency-shop  
13 arrangements. *See* Cal. Gov't Code § 3546.

14 28. The National Labor Relations Act also purports to authorize public-  
15 employee unions to extract money from nonmembers as a condition of their  
16 employment. *See, e.g.*, 29 U.S.C. § 169 (attached to the complaint as Exhibit  
17 3). The National Labor Relations Act is unconstitutional to the extent it  
18 allows public-employee unions to collect "agency fees" or "fair share  
19 service fees" from nonmembers—or any type of money from any public  
20 employee—without first securing the employee's affirmative, written  
21 consent.

22 29. The CTA has committed the tort of conversion by appropriating  
23 money from nonunion agency-fee payers without first securing their  
24 affirmative, written consent. The CTA cannot defend its tortious conduct by  
25 relying on Cal. Gov't Code § 3546 or the National Labor Relations Act,  
26 because each of those statutes is unconstitutional to the extent it purports to



1 shield a public-employee union's compelled extraction of money from  
2 agency-fee payers. Unconstitutional statutes cannot confer immunity on  
3 tortious conduct.

4 30. The representative plaintiffs are bringing suit at this time, rather than  
5 waiting for the Supreme Court's ruling in *Janus v. American Federation of*  
6 *State, County, and Municipal Employees, Council 31*, No. 16-1466, to preserve  
7 the class members' ability to seek retrospective relief against the CTA for as  
8 far back as the statutes of limitations will allow. This is not a concession or  
9 acknowledgement that any statute of limitations applies, or that the  
10 representative plaintiffs or their fellow class members should have their  
11 recovery limited or curtailed by a statute of limitations.

#### 12 **CLASS ALLEGATIONS**

13 31. The representative plaintiffs bring this class action under Fed. R. Civ.  
14 P. 23(b)(1), (b)(2), and (b)(3). The class includes all individuals who: (1) are  
15 or were employed by the State of California or by any public school or school  
16 district located in the State of California; (2) have had any "fair share service  
17 fees" deducted from the money paid to them by their employer and remitted  
18 to the CTA or its affiliates; and (3) have chosen not to become members of  
19 the CTA by refusing to sign membership cards or by choosing to become  
20 agency-fee payers. The class includes everyone who has ever fallen within  
21 this definition, including former and retired teachers or teachers who have  
22 moved to other States, and it includes anyone who comes within the class  
23 definition at any time before the conclusion of this action.

24 32. The number of persons in the class makes joinder of the individual  
25 class members impractical.  
26

1       33. There are questions of fact and law common to all class members.  
2 Factually, all class members are public employees and union nonmembers  
3 compelled to pay “fair share service fees” to the CTA and its affiliates as a  
4 condition of employment. Legally, the U.S. Constitution and California tort  
5 law afford the same rights under the First Amendment to every member of  
6 the class.

7       34. The representative plaintiffs’ claims are typical of other members of  
8 the class, because each member of the class has objected to CTA  
9 membership yet has been forced by state law and contract provisions to  
10 financially support the CTA and its inherently political activities.

11       35. The representative plaintiffs adequately represent the interests of the  
12 class, and they have no interests antagonistic to the class.

13       36. A class action can be maintained under Rule 23(b)(1)(A) because  
14 separate actions by class members could risk inconsistent adjudications on  
15 the underlying legal issues.

16       37. A class action can be maintained under Rule 23(b)(1)(B) because an  
17 adjudication determining the constitutionality of compulsory “fair share  
18 service fees” will, as a practical matter, be dispositive of the interests of all  
19 class members.

20       38. A class action can be maintained under Rule 23(b)(3) because the  
21 common questions of law and fact identified in the complaint predominate  
22 over any questions affecting only individual class members. A class action is  
23 superior to other available methods for the fair and efficient adjudication of  
24 the controversy because, among other things, all class members are subjected  
25 to the same violation of their constitutional rights, but the amount of money  
26

involved in each individual's claim would make it burdensome for class members to maintain separate actions.

### CAUSES OF ACTION

39. The representative plaintiffs and their fellow class members are suing the CTA and its affiliates, Governor Brown, Attorney General Becerra, and the members of the Public Employment Relations Board under 42 U.S.C. § 1983 and the Declaratory Judgment Act, 28 U.S.C. § 2201, each of which supplies a cause of action for the individual and class-wide relief that they are requesting.

40. The representative plaintiffs and their fellow class members are suing Secretary Acosta and the members of the National Labor Relations Board under the Constitution and the Declaratory Judgment Act, 28 U.S.C. § 2201, each of which supplies a cause of action for the relief requested.

41. The representative plaintiffs and their fellow class members are also suing the CTA and its affiliates under the state-law tort of conversion, and they invoke the supplemental jurisdiction of this court over those state-law claims. *See* 28 U.S.C. § 1367.

### DEMAND FOR RELIEF

42. The representative plaintiffs respectfully request that the court:

- a. certify a class of all nonunion members who have been forced to pay agency fees or "fair share service fees" to the California Teachers Association or its affiliates as a condition of their employment;
- b. declare that the representative plaintiffs and their fellow class members have a constitutional right to decline to join or financially support a public-employee union, and that they

1 cannot be forced to pay money to a union or a third-party entity  
2 as a condition of their employment;

3 c. declare that state tort law protects the right of the  
4 representative plaintiffs and their fellow class members not to  
5 have their wages garnished or redirected by the CTA or its  
6 affiliates without their affirmative written consent, and that any  
7 federal or state law or collective-bargaining agreement that  
8 purports to override these protections of state tort law by  
9 allowing the CTA to help itself to the wages and paychecks of  
10 school employees—or that compels school employees to  
11 consent the garnishment of their wages by the CTA or its  
12 affiliates as a condition of their employment—is  
13 unconstitutional and without legal effect;

14 d. declare Cal. Gov't Code § 3546 unconstitutional because it  
15 allows public-employee unions to extract “fair-share service  
16 fees” from nonmembers as a condition of their employment,  
17 and permanently enjoin Governor Brown, Attorney General  
18 Becerra, the members of the Public Employment Relations  
19 Board, and all of their officers, agents, servants, employees,  
20 attorneys, and any other person or entity in active concert or  
21 participation with them, from enforcing Cal. Gov't Code  
22 § 3546, or any other provision of state law that authorizes or  
23 enforces public-employee agency shops;

24 e. declare Cal. Gov't Code § 3546.3 unconstitutional because it  
25 allows public-employee unions to compel nonmembers to pay  
26 money to a union-approved charity and penalizes them for

1 exercising their constitutional right not to join or financially  
2 support a public-employee union, and permanently enjoin  
3 Governor Brown, Attorney General Becerra, the members of  
4 the Public Employment Relations Board, and all of their  
5 officers, agents, servants, employees, attorneys, and any other  
6 person or entity in active concert or participation with them,  
7 from enforcing Cal. Gov't Code § 3546.3, or any other  
8 provision of state law that imposes financial penalties or  
9 deterrents on those who exercise their constitutional right not  
10 to join or financially support a public-employee union;

11 f. declare the National Labor Relations Act unconstitutional to the  
12 extent it allows a public-employee union to require the payment  
13 of “agency fees” or “fair-share service fees” from employees  
14 who have opted out of union membership, and permanently  
15 enjoin Secretary Acosta and the members of the National Labor  
16 Relations Board, along with their officers, agents, servants,  
17 employees, attorneys, and any other person or entity in active  
18 concert or participation with them, from enforcing the National  
19 Labor Relations Act or any other provision of federal law in  
20 manner that allows a public-employee union to collect money  
21 from nonmembers—or compel nonmembers to pay money to a  
22 third-party entity—as a condition of their employment;

23 g. declare the National Labor Relations Act unconstitutional to the  
24 extent it allows a public-employee union to garnish an  
25 employee's wages or deduct money from an employee's salary  
26 or paycheck without first securing the employee's affirmative,

1 written consent, and permanently enjoin Secretary Acosta and  
2 the members of the National Labor Relations Board, along with  
3 their officers, agents, servants, employees, attorneys, and any  
4 other person or entity in active concert or participation with  
5 them, from enforcing the National Labor Relations Act or any  
6 other provision of federal law in manner that allows a public-  
7 employee union to collect money from public employees in this  
8 manner;

9 h. declare that all collective-bargaining agreements that compel  
10 the representative plaintiffs and their fellow class members to  
11 pay “agency fees” or “fair share service fees” to the CTA or its  
12 affiliates as a condition of their employment violate the  
13 constitutional rights of the representative plaintiffs and their  
14 fellow class members;

15 i. order the CTA and its affiliates to repay all agency fees or “fair  
16 share service fees” that were unconstitutionally or unlawfully  
17 extracted from the representative plaintiffs and their fellow  
18 class members;

19 j. permanently enjoin the CTA and its affiliates, along with their  
20 officers, agents, servants, employees, attorneys, and any other  
21 person or entity in active concert or participation with them,  
22 from taking or redirecting any type of money from the  
23 representative plaintiffs, their fellow class members, or any  
24 other public employee as a condition of their employment and  
25 without first obtaining the employee’s affirmative, written  
26 consent;

- 1 k. permanently enjoin all of the defendants, along with their  
2 officers, agents, servants, employees, attorneys, and any other  
3 person or entity in active concert or participation with them,  
4 from enforcing any provision of federal or California law, or any  
5 provision of a collective-bargaining agreement, that requires any  
6 payment of money as a consequence for exercising one's  
7 constitutional right not to join or financially support a public-  
8 employee union;
- 9 l. permanently enjoin all of the defendants, along with their  
10 officers, agents, servants, employees, attorneys, and any other  
11 person or entity in active concert or participation with them,  
12 from enforcing any provision of federal or California law, or any  
13 provision of a collective-bargaining agreement, that prevents or  
14 deters employees from cancelling their membership in a public-  
15 employee union and withdrawing their financial support of a  
16 public-employee union at any time during the calendar year;
- 17 m. award costs and attorneys' fees under 42 U.S.C. § 1988;
- 18 n. grant all other relief that the Court may deem just, proper, or  
19 equitable.  
20  
21  
22  
23  
24  
25  
26

Respectfully submitted.

/s/ Bradley Benbrook

JONATHAN F. MITCHELL\*  
Mitchell Law PLLC  
106 East Sixth Street  
Suite 900  
Austin, Texas 78701  
(512) 686-3940  
jonathan@mitchell.law

BRADLEY BENBROOK  
State Bar No. 177786  
Benbrook Law Group, PC  
400 Capitol Mall  
Suite 2530  
Sacramento, CA 95814  
(916) 447-4900  
brad@benbrooklawgroup.com

Dated: June 5, 2018

\* *pro hac vice* application pending

*Counsel for Plaintiffs and  
the Proposed Class*